

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER 97-0288 AGI
ADJUSTED GROSS INCOME TAX**

For Tax Periods: 1991 Through 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUES

1. Tax Administration-Records

Authority: IC 6-8.1-5-1(a), IC 6-8.1-5-4.

Taxpayer protests the method used in determining the assessment.

STATEMENT OF FACTS

Taxpayer is an individual who owns and operates an unincorporated delicatessen. The delicatessen is open for business from 10:00 a.m. until 2:00 p.m. on Monday through Friday. On Saturday the delicatessen is open for both breakfast and lunch. The delicatessen also has delivery and catering services. Taxpayer's only income is from the deli. Additional adjusted gross income tax as assessed after a routine audit. Taxpayer protested the assessment. Further facts will be provided as necessary.

1. Tax Administration-Records

IC 6-8.1-5-1 (a) provides for the assessment of additional adjusted gross income taxes as follows:

If the department believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the unpaid tax on the basis of the best information available to the department.

In this instance, the Indiana Department of Revenue audited Taxpayer's records. Those records consisted of 1991 - 1995 federal tax returns, and a small amount of other records such as sheets of paper with unverified numbers handwritten on them and

deposit slips for part of the tax period. The records did not include any cash register receipts or any source documents to verify income other than the few deposit slips. IC 6-8.1-5-4 (a) requires that all taxpayers “ keep books and records so that the department can determine the amount, if any, of the person’s liability for that tax by reviewing those books and records.”

The records kept by Taxpayer did not satisfy the statutory requirement that they be adequate for determination of the proper amount of tax due. The auditor calculated the assessment by determining that the dollar amount of the Cost of Goods sold was materially correct as reported. The auditor then relied on reference materials to determine that the cost of goods sold in the industry were 42.8% of sales. The auditor stated that it was well known that the taxpayer makes a generous sandwich when it comes to fillings such as meats and cheeses. Therefore it was determined that 70% would be allowed for cost of goods sold. This is 27.2 % higher than the standard index and 10% below Taxpayer’s estimates. Therefore the notice of proposed assessment reflects the best information available to the Auditor at the time of the audit.

IC 6-8.1-5-1 (a) provides for the assessment of additional adjusted gross income taxes as follows:

The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Taxpayer was unable to present additional documentation at the hearing or in a reasonable period after the hearing to demonstrate that the proposed assessment was incorrect. Therefore Taxpayer did not uphold its burden of proof.

FINDING

Taxpayer’s protest is denied.